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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CTO/156688

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 03, 2014, under Wis. Stat. § 227.42, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on May 15, 2014, at West Bend, Wisconsin.

NOTE: The record was held open to allow the Petitioner to supplement the record with documentation from the Social Security Administration (SSA). The Petitioner submitted a fax containing notices from the SSA dated January 31, 2014, May 9, 2013 (pages 1, 3 and 5 only) and December 16, 2013 (pages 1 and 3 only). The fax packet has been marked as Exhibit 3 and entered into the record.

The issue for determination is whether the Petitioner was overpaid Care Taker Supplement (CTS) benefits in December 2013.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Representative:

Susan Bowen  
Washington County  
Aging and Disability Resource Center

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: No One

Division of Health Care Access and Accountability

Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.

2. On March 20, 2014, the Petitioner received a Notice of State SSI and/or Caretaker Supplement Overpayment indicating that she was overpaid benefits for the month of December 2013, in the amount of \$530.43. (Exhibit 2)
3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 3, 2014. (Exhibit 1)
4. On December 16, 2013, the Social Security Administration sent Petitioner a notice indicating that as of January 1, 2014, she would not be receiving any Supplemental Security Benefits. (Exhibit 3)
5. On January 31, 2014, the Social Security Administration sent the Petitioner a notice indicating that she was overpaid \$88.00 in Supplemental Security Benefits for the month of January 2013. The notice indicated that Petitioner's wages went up and as such, she was not entitled to any benefits for that month. (Exhibit 3)
6. On February 20, 2014, the Social Security Administration sent the Petitioner a notice indicating that effective March 1, 2014, she would be receiving \$9.53 in Supplemental Security Benefits. (Exhibit 1)

### **DISCUSSION**

Beginning January 1, 1998, with the advent of the Wisconsin Works (W-2) program, AFDC ceased to exist in this state. Since W-2 is a work program, and SSI recipients by definition are unable to work, SSI recipients cannot qualify for W-2. The state thus implemented the Caretaker Supplement (CTS) Program, which currently pays SSI recipient parents \$250 per month for one child and \$150 per month for each additional child. The program is mandated by Wis. Stat., §49.775. See also SSI Eligibility Handbook Sec. 4.1.7

To be eligible for the CTS payments the following criteria must be met: (1) the caretaker must be an SSI recipient, or if both parents are in the home, both parents must receive SSI; (2) the child or children must meet the financial and non-financial criteria for AFDC as it existed on July 16, 1996; and (3) the child or children must not receive SSI payments themselves. Wis. Stat. §49.775(2)(a), (b) and (c); CTS Handbook, § 1.1.

Wis. Adm. Code, §DHS 2.04(1), allows for the Department to recoup incorrectly paid Caretaker Supplement benefits. While the administrative rules do not contain a provision explicitly allowing forgiveness of an overpayment caused by agency error, Wis. Admin. Code §DHS 2.05 does state that "Recovery of incorrectly paid benefits may be waived when the recovery of the overpayment is considered to be against equity or when it causes undue hardship, or the recovery impedes efficient and effective administration of programs due to the small amount involved or the age of the account."

Under Wis. Adm. Code, §DHS 2.04(3), the Department may recoup the overpayment, at the rate of 10% of the current benefit paid, overpayments of incorrect CTS. "Incorrectly paid benefits" means payments for which a person was not eligible, or to which a person was not entitled. See also the CTS Handbook, §4.3.

In the case at hand, the Petitioner does not dispute the fact that she received Caretaker Supplement benefits for her two children in December 2013. However, Petitioner disagrees with DHS's determination that she was not entitled to those benefits.

No one from DHS appeared at the hearing to offer testimony explaining the basis of the alleged overpayment and no one from DHS provided any documentation to explain the basis of the alleged overpayment, nor did they provide proof to support the alleged overpayment.

The Petitioner testified credibly that she received a Federal SSI payment of \$88.00 for December 2013. Petitioner provided several notices from the SSA and none state that she was not eligible to receive a payment in December 2013, nor do any of them indicate an overpayment for December 2013.

Based upon the foregoing, it is found that DHS has not met its burden to prove the Petitioner was overpaid Caretaker Supplement payments for December 2013.

### **CONCLUSIONS OF LAW**

DHS has not met its burden to prove the Petitioner was overpaid Caretaker Supplement payments for December 2013.

**THEREFORE, it is**

### **ORDERED**

That DHS rescind the March 20, 2014 Notice of State SSI and/or Caretaker Supplement Overpayment and cease collection efforts. DHS shall take all administrative steps to complete these tasks within ten days.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 9th day of July, 2014.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 9, 2014.

Division of Health Care Access and Accountability  
State SSI